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PLR-124690-10

Date:

October 14, 2010

LEGEND

Oldco =

Distributing 1 =

Distributing 2 =

Sub 1 =

Sub 2 =

LLC =

LP =

Merger Sub =

Shareholder 1 =

Shareholder 2 =

Shareholder 3 =

Business A =

Business B =

Business C =

Business D =

Business E =

Customer =

Bonds 1 =

Bonds 2 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

State X =

State Y =

Year 1 =

Year 2 =

Year 3 =

Year 4 =

a =

b =

c =

d =

e =

f =

g =

h =

i =

i =

k =

l =

m =

n =

o =

p =

q =

r =

s =

t =

Dear :

This letter responds to your June 11, 2010, letter requesting rulings on certain federal income tax consequences of proposed transactions. The information provided in that letter and in later correspondence is summarized below.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalties of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding, whether the proposed transactions (described below) (i) satisfy the business purpose requirement of Treas. Reg. § 1.355-2(b), (ii) are used principally as a device for the distribution of the earnings and profits of the distributing corporation or the controlled corporation or both (see § 355(a)(1)(B) of the Internal Revenue Code (the “Code”) and Treas. Reg. § 1.355-2(d)), or (iii) are part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and Treas. Reg. § 1.355-7).

FACTS

Oldco is a State X corporation and the common parent of an affiliated group of corporations that files a consolidated federal income tax return (the “Oldco Group”). Oldco has outstanding one class of common stock, which is widely held and publicly traded. Based on public filings with the Securities and Exchange Commission, Oldco believes that, as of Date 1, Shareholder 1, Shareholder 2 and Shareholder 3 each owns directly five percent or more of the voting power or the fair market value of the outstanding stock of Oldco, and that no other shareholders own five percent or more of such voting power or fair market value. Neither Shareholder 1, Shareholder 2 nor Shareholder 3 actively participates in the management of Oldco.

Oldco has, in the past, from time to time, depending on market conditions, repurchased its stock in the open market and through accelerated share repurchase agreements with banks. Under a share repurchase program authorized by Oldco’s board of directors on Date 2, Oldco was authorized to repurchase up to \$a of its common stock. On Date 3, Oldco’s board of directors increased the share repurchase authorization by \$b. On

Date 4, Oldco's board of directors authorized a new program (collectively with the earlier programs, the "Repurchase Program") to repurchase up to \$c of its common stock. The Repurchase Program does not have an expiration date. Pursuant to the Repurchase Program, Oldco repurchased approximately d shares (e percent) of its common stock during Year 1, f shares (g percent) during Year 2, h shares (i percent) during Year 3 and j shares (k percent) in Year 4, through Date 5. As of Date 5, the unexercised authorization was approximately \$l.

Oldco owns all the stock of Sub 1, a State Y corporation, and Sub 2, a State X corporation. Sub 1 and the members of the separate affiliated group, as defined in section 355(b)(3) ("SAG") of which Sub 1 is the common parent (the "Sub 1 SAG"), conduct Business A. Sub 2 and the members of its SAG (the "Sub 2 SAG"), conduct Business B, Business C, Business D and Business E (the "Retained Businesses").

Financial information has been received indicating that Business A and Business B each has had gross receipts and operating expenses representative of the active conduct of a trade or business for each of the past five years.

Oldco also owns other assets and is a party to various contracts. Oldco is also the plaintiff or defendant in various pending lawsuits arising out of the Oldco Group's businesses.

Oldco has outstanding notes (the "Oldco Notes") with aggregate face amount of \$m. The Oldco Notes are widely held and publicly traded. Under the terms of the indenture governing the Oldco Notes, if Oldco transfers its properties and assets substantially as an entirety to another corporation, a partnership, a trust or a limited liability company, the transferee will be required to assume Oldco's obligations under the Oldco Notes, and Oldco will be relieved of its liability.

Sub 2 has outstanding notes (the "Sub 2 Notes") with aggregate face amount of approximately \$n. The Sub 2 Notes are widely held and publicly traded. Oldco guarantees the Sub 2 Notes (the "Sub 2 Notes Guarantees"). Under the terms of the Sub 2 Notes Guarantees, if Oldco transfers all or substantially all of its assets, or transfers all of its assets substantially as an entirety, to another corporation, a partnership or a trust, the transferee will be required to assume Oldco's obligations under the Sub 2 Notes Guarantees, and Oldco will be relieved of its obligations under the Sub 2 Notes Guarantees.

Sub 2 performs internal cash management functions for the Oldco Group. Pursuant to this arrangement, other members of the Oldco Group transfer their excess cash in daily sweeps to Sub 2. Primarily as a result of this arrangement, Sub 2 owes approximately \$o of open account debt to Sub 1 and its subsidiaries (the "Intercompany Debt").

Sub 1 has outstanding loans supporting \$p principal amount of debt related to Bonds 1. Oldco guarantees Sub 1's obligations under the debt related to Bonds 1 (the "Bonds 1

Guarantee”). The Bonds 1 Guarantee requires Oldco to remain in existence as a corporation and provides no mechanism for Oldco to transfer its obligations except by operation of law in a merger. It is anticipated that Sub 1 will make a tender offer for the Bonds 1 prior to the proposed transactions, using cash from partial repayment of the Intercompany Debt, and that most but likely not all of the holders of the Bonds 1 will accept such tender offer.

Sub 1 also has outstanding loans supporting \$g principal amount of debt related to Bonds 2. Sub 2 guarantees Sub 1’s obligations under the debt related to Bonds 2 (the “Bonds 2 Guarantee”). The Bonds 2 Guarantee provide no mechanism for Sub 2 to transfer this obligation.

Sub 1 and the members of the Sub 1 SAG have a number of Business A contracts with Customer (the “Customer Contracts”). Oldco has guaranteed Sub 1’s performance of some of the Customer Contracts (the “Customer Guarantees”). There is no provision for Oldco to transfer its obligations pursuant to the Customer Guarantees to another entity, except by operation of law in a merger. After the proposed transactions, however, neither Oldco nor Distributing 2 will have the facilities or personnel to perform the Customer Contracts.

In preparation for the proposed transactions, Oldco formed two new State X corporations, Distributing 2, and Distributing 1. Oldco owns all the stock of Distributing 2, and Distributing 2 owns all the stock of Distributing 1.

In preparation for the proposed transactions, Oldco will form LLC, a State X limited liability company, LP, a State X limited partnership, and Merger Sub, a State X corporation. Distributing 2 will own the sole membership interest in LLC; Distributing 2 and LLC will own all the partnership interests in LP; and LP will own all the stock of Merger Sub. LLC and LP each will be classified as an entity disregarded as separate from its owner (Distributing 2 in each case) for federal tax purposes under Treas. Reg. § 301.7701-3.

Business A differs in profit margin, capital requirements and customer focus from the Retained Businesses. The proposed transactions are intended to separate Business A from the Retained Businesses. Following the proposed transactions, Distributing 1 and Distributing 2 each will be a separate, publicly-traded corporation; Distributing 1 will own all the stock of Sub 1, which will conduct Business A through the Sub 1 SAG; and Distributing 2 will own all of the stock of Sub 2, which will conduct the Retained Businesses through the Sub 2 SAG.

The purposes of the proposed transactions are: (i) to eliminate competition for capital between Business A and the Retained Businesses; (ii) to enhance customer focus; (iii) to enhance management focus; and (iv) to increase the aggregate value of the stock of Distributing 1 and Distributing 2 above the value the Oldco stock would have if it had

continued to own both Business A and the Retained Businesses (the “Corporate Business Purposes”).

PROPOSED TRANSACTIONS

To achieve the Corporate Business Purposes, Oldco has proposed the following transactions:

- (i) Sub 1 will distribute the Intercompany Debt receivable to Oldco (the “Intercompany Debt Distribution”).
- (ii) Merger Sub will merge into Oldco with Oldco as the survivor (the “Merger”). In the Merger, the Oldco shareholders will exchange their Oldco stock for all the outstanding stock of Distributing 2. Immediately after the Merger, Oldco will be a wholly-owned subsidiary of LP, and all the members of the Sub 1 SAG and the Sub 2 SAG, as well as Distributing 1 and Distributing 2, will be members of the SAG of which Distributing 2 is the parent (the “Distributing 2 SAG”).
- (iii) Distributing 2 will transfer its sole membership interest in LLC and its partnership interest in LP to its wholly-owned subsidiary, Distributing 1 (the “LLC and LP Contribution”).
- (iv) Oldco will distribute all of its assets (consisting principally of the stock of Sub 1 and Sub 2 and the Intercompany Debt receivable from Sub 2) to LP, and LP will assume all of Oldco’s liabilities and other obligations except Oldco’s obligations under the Customer Guarantees and the Bonds 1 Guarantee. Pursuant to the applicable debt and/or guarantee documents, LP will replace Oldco as the obligor on the Oldco Notes and as the guarantor under the Sub 2 Notes Guarantees. Distributing 1 will enter into performance and indemnity agreements with Oldco (the “P&I Agreements”) whereby Distributing 1 will have primary responsibility for Oldco’s obligations under the Customer Guarantees and under the Bonds 1 Guarantee. Collectively, these transactions are referred to as the “Oldco Distribution.”

Wherever possible, Oldco will transfer its assets (other than the stock of Sub 1 and Sub 2) and assign its rights and obligations under any contracts (other than its obligations under the Oldco Notes, the Customer Guarantees and the Bonds 1 Guarantees) and under any pending lawsuits, in each case to the appropriate affiliate (Sub 1, Sub 2 or one of their subsidiaries) before the Oldco Distribution. With respect to some contracts and lawsuits, however, it may not be feasible to eliminate Oldco’s legal role. In such instances, prior to the Oldco Distribution, the appropriate affiliates will enter into agreements with Oldco (similar in effect to the P&I Agreements) and, pursuant thereto, such affiliates will receive the benefits and assume the burdens attributable to such contracts and lawsuits. Also, due to consent requirements or other legal impediments, the transfer of some of Oldco’s

assets, rights and obligations (the “Delayed Transfer Items”) may not be completed until after the Oldco Distribution. Oldco will transfer any such Delayed Transfer Items to the appropriate affiliates as soon as practicable after Oldco obtains such consents or removes such impediments. At all times subsequent to the Oldco Distribution, however, by agreement the relevant affiliates will have the right to receive or the obligation to assume all of the Delayed Transfer Items.

- (v) LP will distribute to LLC and Distributing 1, in accordance with their interests in LP, all the stock of Sub 1 and Oldco. LLC will then distribute to Distributing 1 the portion of the stock of Oldco and Sub 1 it received from LP. Collectively, these transactions are referred to as the “LP Distribution.”
- (vi) Distributing 1 will borrow funds from an unrelated lender or group of lenders (the “New Debt”).
- (vii) Distributing 1 will contribute to Sub 2 the Intercompany Debt receivable and all or part of the cash proceeds of the New Debt up to \$ of that amount (the “Transferred Debt Proceeds”) as follows: (a) Distributing 1 will contribute to LLC a portion of the Transferred Debt Proceeds equal to LLC’s proportionate interest in LP; (b) LLC will contribute to LP all of the Transferred Debt Proceeds contributed to LLC by Distributing 1; (c) Distributing 1 will contribute the remaining Transferred Debt Proceeds to LP; and (d) LP will contribute the Intercompany Debt receivable and Transferred Debt Proceeds to Sub 2. Collectively, these transfers are referred to as the “Contribution.”
- (viii) Distributing 1 will distribute its membership interest in LLC and its partnership interest in LP to Distributing 2. Assuming LLC and LP are disregarded as entities separate from the owner, Distributing 2 will be deemed (a) to receive a distribution of all the assets of LP, principally the stock of Sub 2 (the “Internal Spin”) and (b) to assume liability for the Oldco Notes and the obligations under the Sub 2 Notes Guarantees (the “Deemed Distributing 2 Assumption”). Collectively, the Internal Spin and the Deemed Distributing 2 Assumption are referred to as the “Distributing 1 Distribution.”
- (ix) Distributing 2 will distribute the stock of Distributing 1 to its shareholders, pro rata (the “External Spin”). No fractional shares of Distributing 1 stock will be distributed. Instead, Distributing 2 will aggregate the shares that otherwise would be distributed as fractional shares, sell such shares and distribute the cash proceeds to the shareholders who otherwise would have received such fractional shares.
- (x) LLC will distribute its partnership interest in LP to Distributing 2; LP will be dissolved and will distribute all of its assets to its sole owner, Distributing 2, which will also assume LP’s liability for the Oldco Notes and LP’s guarantor obligations

under the Sub 2 Notes Guarantees; then LLC will be dissolved. Collectively, these transactions are referred to as the “LP and LLC Dissolutions.”

Distributing 1 and Distributing 2 will enter into a Separation and Distribution Agreement and other agreements relating to various separation matters, including tax sharing, employee compensation and transitional services such as information technology, payroll, tax, accounting and legal services (the “Ancillary Agreements”).

After the transactions, it is anticipated that Distributing 2 will purchase its own stock in amounts at least consistent with Oldco’s prior practice. Depending on market conditions, Distributing 2 may repurchase up to 5 percent of its outstanding shares (determined as of the time of the External Spin) within two years after the External Spin. In addition, during such period Distributing 2 or its subsidiaries may engage in certain types of transactions that make cash available not in the ordinary course of business. In such case, Distributing 2 may use some or all of such cash to purchase additional shares of Distributing 2 stock.

Depending on market conditions, Distributing 1 may purchase up to 1 percent of its outstanding shares (determined as of the time of the External Spin) within two years after the External Spin.

It is anticipated that such stock purchases will be through open market purchases, block purchases, accelerated share repurchase transactions, Dutch auction or modified Dutch auction tender offers, or some combination thereof. Neither Distributing 1 nor Distributing 2 has any plan or intention to make a block purchase of stock during such period from any shareholder who owns five percent or more of the stock in, or the securities of, Distributing 1 or Distributing 2 (as the case may be) at the time of the purchase.

REPRESENTATIONS

The Merger

The following representations have been made regarding the Merger:

- (a) Distributing 2 will acquire Oldco stock solely in exchange for Distributing 2 stock. No Oldco stock will be redeemed for cash or other property except in market repurchases unrelated to the transaction.
- (b) No Distributing 2 stock will be issued for services rendered to or for the benefit of Distributing 2 in connection with the transaction, for indebtedness of Distributing 2 or for interest on indebtedness of Distributing 2 which accrued on or after the beginning of the holding period of the transferor(s) for the debt.

- (c) None of the Oldco stock to be transferred will be “section 306 stock” within the meaning of section 306(c).
- (d) The transfer is not the result of the solicitation by a promoter, broker or investment house.
- (e) The Oldco shareholders will not retain any rights in the property transferred to Distributing 2.
- (f) The stock of Oldco transferred to Distributing 2 will not be subject to any liabilities; nor are any liabilities of the Oldco shareholders being assumed by Distributing 2. Accordingly, the adjusted basis and the fair market value of the stock of Oldco to be transferred by the Oldco shareholders to Distributing 2 will, in each instance, be equal to or exceed the sum of the liabilities to be assumed by Distributing 2 plus any liabilities to which the stock of Oldco is subject. See section 357(c).
- (g) There is no indebtedness between Distributing 2 and Oldco shareholders, and there will be no indebtedness created in favor of the transferors as a result of the transaction.
- (h) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined. See Treas. Reg. § 1.351-1(a)(1).
- (i) All exchanges will occur on approximately the same date.
- (j) Distributing 2 has no plan or intention to redeem or otherwise reacquire any of its stock issued in the transaction, except that Distributing 2 will continue Oldco’s practice of repurchasing stock from time to time, as described above.
- (k) Taking into account any issuance of additional shares of Distributing 2 stock; any issuance of stock for services; the exercise of any Distributing 2 stock rights, warrants, or subscriptions; a public offering of Distributing 2 stock; and the sale, exchange, transfer by gift, or other disposition of any of the stock of Distributing 2 to be received in the exchange, the former Oldco shareholders will be in control of Distributing 2 within the meaning of section 368(c). See Rev. Rul. 59-259, 1959-2 C.B. 115, and Treas. Reg. § 1.351-1(a)(1).
- (l) Distributing 2 has no plan or intention to issue additional shares of its stock that would result in the Oldco shareholders losing control of Distributing 2 within the meaning of section 368(c).
- (m) Each Oldco shareholder will receive stock of Distributing 2 approximately equal to the fair market value of the stock of Oldco transferred to Distributing 2.

- (n) Distributing 2 will remain in existence and, except for the External Spin, will retain and use the property transferred to it in a trade or business.
- (o) Except for the Oldco Distribution, there is no plan or intention by Distributing 2 to dispose of the transferred Oldco stock other than in the normal course of business operations.
- (p) Oldco may pay or reimburse expenses and costs incurred by it or its subsidiaries and affiliates, including Distributing 1 and Distributing 2, related solely and directly to the proposed transactions but will not pay or reimburse any costs or expenses incurred by Oldco shareholders.
- (q) Distributing 2 will not be an investment company within the meaning of section 351(e)(1) and Treas. Reg. § 1.351-1(c)(1)(ii).
- (r) Oldco is not aware of any Oldco shareholders being under the jurisdiction of a court in a Title 11 or similar case within the meaning of section 368(a)(3)(A), or of any of the stock received in the transaction being used to satisfy the indebtedness of such debtor.
- (s) Distributing 2 will not be a personal services corporation within the meaning of section 269A.

The LLC and LP Contribution and the Oldco Distribution

The following representations have been made regarding the LLC and LP Contribution and the Oldco Distribution:

- (t) Immediately before the Oldco Distribution, the fair market value of the assets of Oldco will exceed the sum of its liabilities plus the liabilities, if any, to which the assets are subject.
- (u) Immediately following consummation of the transaction, Distributing 2 will own all of the outstanding Distributing 1 stock and will own such stock solely by reason of its deemed ownership of Oldco stock immediately prior to the transaction.
- (v) Immediately following consummation of the transaction, Distributing 1 (through LLC and LP) will possess the same assets and liabilities as those possessed by Oldco immediately prior to the transaction. Assets used to pay expenses incurred in connection with the transaction and all redemptions and distributions (except for regular, normal dividends) made by Oldco immediately preceding the transaction will, in the aggregate, constitute less than one percent (1%) of the net assets of Oldco.

- (w) Following consummation of the Oldco Distribution, Oldco will not conduct any business activities. Oldco will not own any assets, have any liabilities or other obligations, or be a party to any contracts other than (i) the Delayed Transfer Items and (ii) in accordance with the Bonds 1 Guarantee, the Customer Guarantees, the P&I Agreements and other agreements or arrangements pursuant to which Oldco will have transferred the economic benefits and burdens of its assets, rights and obligations to Distributing 1, Distributing 2 or their respective affiliates.
- (x) The adjusted basis and the fair market value of the assets transferred by Oldco in the Oldco Distribution will, in each instance, be equal to or greater than the amount of Oldco liabilities assumed by Distributing 1.
- (y) Other than Oldco options and benefit plans for employees and directors, Oldco will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Oldco.
- (z) The liabilities of Oldco assumed by Distributing 1 in the Oldco Distribution plus the liabilities (if any) to which the transferred assets are subject were incurred by Oldco in the ordinary course of its business and are associated with the assets being transferred.
- (aa) Distributing 2 will pay its own expenses, if any, incurred in connection with the transaction.
- (bb) Oldco is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of 368(a)(3)(A).
- (cc) Distributing 2 does not own, directly or indirectly, nor has it owned during the past five years, directly or indirectly, any stock of Oldco.
- (dd) No two parties to the transactions are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (ee) Except for the Contribution, the Distributing 1 Distribution and the other proposed transactions, Distributing 2 has no plan to liquidate Distributing 1 (as the successor to Oldco), merge Distributing 1 into another corporation, or cause Distributing 1 to sell or otherwise dispose of any Distributing 1 assets other than in the ordinary course of business, or to sell any Distributing 1 stock except for transfers described in section 368(a)(2)(C).
- (ff) After the transactions, Distributing 1 will not sell or otherwise dispose of any Oldco stock, except that Oldco may be dissolved or merged into Distributing 1 or another member of the Distributing 1 Group. Distributing 1 will not claim a worthless stock deduction with respect to the Oldco stock.

- (gg) There will be no change in payment expectations, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(vi), and no significant alteration, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(i)(E), with respect to the Oldco Notes or the Sub 2 Notes as a result of the Merger or the Oldco Distribution.

The Internal Spin

The following representations have been made regarding the Internal Spin:

- (hh) No indebtedness owed by Sub 2 to Distributing 1 (or any successors to Distributing 1) after the Internal Spin will constitute stock or securities of Sub 2.
- (ii) No part of the consideration to be distributed by Distributing 1 in the Internal Spin will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 1.
- (jj) The five years of financial information submitted on behalf of the business conducted by Distributing 1 and the members of its “separate affiliated group,” as defined in section 355(b)(3) (the “Distributing 1 SAG”), is representative of its present operation, and, with regard to it, there have been no substantial operational changes since the date of the last financial statements submitted.
- (kk) The five years of financial information submitted on behalf of the business conducted by the Sub 2 SAG is representative of its present operation, and, with regard to it, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ll) Except for services to be provided pursuant to the Ancillary Agreements, following the Internal Spin, the Distributing 1 SAG and the Sub 2 SAG will each continue the active conduct of its business, independently and with its separate employees.
- (mm) The Internal Spin will be carried out for the corporate business purpose of facilitating the External Spin, which will be carried out for the stated Corporate Business Purposes. The distribution of stock of Sub 2 in the Internal Spin is motivated, in whole or substantial part, by this corporate business purpose.
- (nn) The Internal Spin is not used principally as a device for the distribution of the earnings and profits of Sub 2 or Distributing 1, or both.
- (oo) For purposes of section 355(d), immediately after the Internal Spin, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was acquired by purchase (as defined in

section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spin.

- (pp) For purposes of section 355(d), immediately after the Internal Spin, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Sub 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Sub 2 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spin or (ii) attributable to distributions on Distributing 1 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the Internal Spin.
- (qq) Distributing 1 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the Internal Spin.
- (rr) Except in connection with the continuing transactions under the Ancillary Agreements and the Bonds 2 Guarantee, no intercorporate debt will exist between Sub 2 or its subsidiaries and Distributing 1 or its subsidiaries at the time of, or subsequent to, the Internal Spin.
- (ss) At the time of the Internal Spin, Distributing 1 will not have an excess loss account in the stock of Sub 2.
- (tt) Neither Business A, conducted by Sub 1 and its subsidiaries, nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Spin in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (uu) Neither Business B, conducted by Sub 2 and its subsidiaries, nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the Internal Spin in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (vv) Payments made in connection with continuing transactions (if any) between Distributing 1 and Sub 2 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Ancillary Agreements, which may be based on cost or cost-plus arrangements.
- (ww) No two parties to the Internal Spin are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).

- (xx) The Internal Spin is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50% or greater interest (within the meaning of section 355(d)(4)) in Distributing 1 or Sub 2 (including any predecessor or successor of any such corporation).
- (yy) All repurchases of stock by Oldco prior to the date of the Internal Spin were not (or, to the extent they have not yet occurred, will not be) related to the proposed transactions, and the amount and timing of such repurchases would have been the same regardless of the proposed transactions.
- (zz) Immediately after the Internal Spin (as defined in section 355(g)(4)) neither Distributing 2 nor Distributing 1 will be a disqualified investment corporation (within the meaning of section 355(g)(3)).
- (aaa) There is no regulatory, legal, contractual, or economic compulsion or requirement that the Deemed Distributing 2 Assumption be made as a condition of the Internal Spin. For purposes of this representation, the fact that the Internal Spin and the Deemed Distributing 2 Assumption will take the form of a distribution of interests in disregarded LLC and disregarded LP, which is the only entity liable for the obligations that are deemed to be assumed, does not by itself constitute or result in such regulatory, legal, contractual, or economic compulsion or requirement. The fact that the value of Distributing 1 will decrease as a result of the Internal Spin was not a consideration in the Deemed Distributing 2 Assumption. The Internal Spin is not contingent on a contribution to Distributing 1 (including through the Deemed Distributing 2 Assumption) of assets having a specified (or roughly specified) value.

The Deemed Distributing 2 Assumption

The following representation has been made regarding the Deemed Distributing 2 Assumption:

- (bbb) There will be no change in payment expectations, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(vi), and no significant alteration, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(i)(E), with respect to the Oldco Notes or the Sub 2 Notes as a result of the Deemed Distributing 2 Assumption.

The External Spin

The following representations have been made regarding the External Spin:

- (ccc) No indebtedness owed by Distributing 1 to Distributing 2 (or any successors to Distributing 2) after the External Spin will constitute stock or securities.

- (ddd) No part of the consideration to be distributed by Distributing 2 in the External Spin will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing 2.
- (eee) The five years of financial information submitted on behalf of the business conducted by the Sub 2 SAG is representative of its present operation, and, with regard to it, there have been no substantial operational changes since the date of the last financial statements submitted.
- (fff) The five years of financial information submitted on behalf of the business conducted by the Distributing 1 SAG is representative of its present operation, and, with regard to it, there have been no substantial operational changes since the date of the last financial statements submitted.
- (ggg) Except for services to be provided pursuant to the Ancillary Agreements, following the External Spin, the Distributing 1 SAG and the Distributing 2 SAG will each continue the active conduct of its business, independently and with its separate employees.
- (hhh) The External Spin will be carried out for the following Corporate Business Purposes: (i) to eliminate competition for capital; (ii) to enhance customer focus; (iii) to enhance management focus and (iv) to increase stock value. The distribution of stock in Distributing 1 in the External Spin is motivated, in whole or substantial part, by one or more of these corporate business purposes.
- (iii) The External Spin is not used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1 or both.
- (jjj) For purposes of section 355(d), immediately after the External Spin, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 2 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 2 stock, that was acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Spin.
- (kkk) For purposes of section 355(d), immediately after the External Spin, no person (determined after applying section 355(d)(7)) will hold stock possessing 50 percent or more of the total combined voting power of all classes of Distributing 1 stock entitled to vote, or 50 percent or more of the total value of shares of all classes of Distributing 1 stock, that was either (i) acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-year period (determined after applying section 355(d)(6)) ending on the date of the External Spin or (ii) attributable to distributions on Distributing 2 stock or securities that were acquired by purchase (as defined in section 355(d)(5) and (8)) during the five-

year period (determined after applying section 355(d)(6)) ending on the date of the External Spin.

- (III) Distributing 2 neither accumulated its receivables nor made extraordinary payment of its payables in anticipation of the External Spin.
- (mmm) Except in connection with the continuing transactions under the Ancillary Agreements and the Bonds 2 Guarantee, no intercorporate debt will exist between Distributing 2 or its subsidiaries and Distributing 1 or its subsidiaries at the time of, or subsequent to, the External Spin.
- (nnn) Immediately before the External Spin, items of income, gain, loss, deduction and credit will be taken into account as required by the applicable intercompany transaction regulations (see Treas. Reg. § 1.1502-13 and § 1.1502-14 as in effect before the publication of T.D. 8597, 1995-2 C.B. 147, and as currently in effect; Treas. Reg. § 1.1502-13 as published in T.D. 8597). Further, any excess loss account that Distributing 2 has in the Distributing 1 stock will be included in income immediately before the External Spin (see Treas. Reg. § 1.1502-19).
- (ooo) Neither Business B, conducted by Sub 2 and its subsidiaries, nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the External Spin in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (ppp) Neither Business A, conducted by Sub 1 and its subsidiaries, nor control of any entity conducting this business will have been acquired during the five-year period ending on the date of the External Spin in a transaction in which gain or loss was recognized (or treated as recognized under Prop. Treas. Reg. § 1.355-3) in whole or in part.
- (qqq) Payments made in connection with continuing transactions (if any) between Distributing 2 and Distributing 1 will be for fair market value based on terms and conditions arrived at by the parties bargaining at arm's length, except for certain transactions and arrangements under the Ancillary Agreements, which may be based on cost or cost-plus arrangements.
- (rrr) No two parties to the External Spin are investment companies as defined in sections 368(a)(2)(F)(iii) and (iv).
- (sss) The External Spin is not part of a plan or series of related transactions (within the meaning of Treas. Reg. § 1.355-7) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50-percent or greater interest (within the meaning of section 355(d)(4)) in Distributing 2 or Distributing 1 (including any predecessor or successor of any such corporation).

- (ttt) All repurchases of stock by Oldco or Distributing 2 prior to the date of the External Spin were not (or, to the extent they have not yet occurred, will not be) related to the proposed transactions, and the amount and timing of such repurchases would have been the same regardless of the proposed transactions.
- (uuu) Immediately after the External Spin (as defined in section 355(g)(4)) neither Distributing 1 nor Distributing 2 will be a disqualified investment corporation (within the meaning of section 355(g)(2)).
- (vvv) The payment of cash in lieu of fractional shares of Distributing 1 stock is solely for the purpose of avoiding the expense and inconvenience of distributing fractional shares and does not represent separately bargained-for-consideration. It is intended that no Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Distributing 1 stock.
- (www) The deemed transfer by the Oldco shareholders of their Oldco stock to Distributing 2 in the Merger is not intended to be part of an exchange that includes any part of the External Spin.
- (xxx) The payment of cash in lieu of fractional shares of Distributing 1 stock is solely for the purpose of avoiding the expense and inconvenience of distributing fractional shares and does not represent separately bargained-for-consideration. It is intended that no Distributing 2 shareholder will receive cash in an amount equal to or greater than the value of one full share of Distributing 1 stock.

The LP and LLC Dissolutions

The following representation has been made regarding the LP and LLC Dissolutions:

- (yyy) There will be no change in payment expectations, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(vi), and no significant alteration, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(i)(E), with respect to the Oldco Notes or the Sub 2 Notes as a result of the LP and LLC Dissolutions.

The Oldco Notes and Sub 2 Notes

The following additional representations have been made regarding the Oldco Notes and the Sub 2 Notes:

- (zzz) The Oldco Notes are full recourse obligations of Oldco, will be full recourse obligations of LP after the Oldco Distribution and will be full recourse obligations of Distributing 2 after the LP and LLC Dissolutions and after the proposed transactions.

- (aaaa) The Sub 2 Notes are full recourse obligations of Sub 2, and they will continue to be full recourse obligations of Sub 2 during and after the proposed transactions.
- (bbbb) Had all the proposed transactions affecting the Oldco Notes and the Sub 2 Notes been done as a single change, there would have been no change in payment expectations, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(vi), and no significant alteration, within the meaning of Treas. Reg. § 1.1001-3(e)(4)(i)(E), with respect to the Oldco Notes or the Sub 2 Notes.

RULINGS

The Intercompany Debt Distribution

Based solely on the information and representations submitted, we rule as follows on the Intercompany Debt Distribution:

- (1) Immediately before the Intercompany Debt Distribution, the Intercompany Debt will be deemed satisfied by Sub 2 for cash in an amount equal to its fair market value and then reissued as a new obligation (with a new holding period but otherwise identical terms) for the same amount of cash (Treas. Reg. § 1.1502-13(g)(3)(ii)).
- (2) The Intercompany Debt Distribution will constitute an intercompany distribution (Treas. Reg. § 1.1502-13(f)(2)).
- (3) Oldco's basis in the stock of Sub 1 will be subject to a negative adjustment equal to the fair market value of the Intercompany Debt (Treas. Reg. § 1.1502-32(b)(2)(iv)).

The Merger

Based solely on the information and representations submitted, we rule as follows on the Merger:

- (4) For federal income tax purposes, the Merger will be deemed to constitute a transfer by the Oldco shareholders of their Oldco stock to Distributing 2 solely in exchange for Distributing 2 stock.
- (5) No gain or loss will be recognized to the Oldco shareholders upon the deemed transfer of their Oldco stock to Distributing 2 solely in exchange for all the stock of Distributing 2 (section 351(a)).
- (6) No gain or loss will be recognized to Distributing 2 upon its deemed receipt of stock of Oldco solely in exchange for Distributing 2 stock (section 1032(a)).

- (7) The basis of the Distributing 2 stock received by each Oldco shareholder will be the same as the basis of the Oldco stock surrendered in the exchange (section 358(a)(1)).
- (8) The holding period of the Distributing 2 stock received by each Oldco shareholder will include the period during which the shareholder held the Oldco stock, provided that such Oldco stock was held as a capital asset on the date of the exchange (section 1223(1)).
- (9) The holding period of the Oldco stock received by Distributing 2 will include the period during which such Oldco stock was held by each transferring Oldco shareholder (section 1223(2)).

The LLC and LP Contribution and the Oldco Distribution

Based solely on the information and representations submitted, we rule as follows on the LLC and LP Contribution and the Oldco Distribution:

- (10) For federal income tax purposes, the LLC and LP Contribution and the Oldco Distribution will be deemed to constitute (a) a transfer by Oldco of all of its assets to Distributing 1 in exchange for (i) all the stock of Distributing 1 and (ii) an assumption by Distributing 1 of all of the liabilities and obligations of Oldco, and (b) a distribution in liquidation by Oldco to Distributing 2 of such Distributing 1 stock.
- (11) The deemed transfer by Oldco of all of its assets to Distributing 1 in exchange for Distributing 1 stock and the assumption by Distributing 1 of Oldco's liabilities and other obligations, together with the deemed distribution by Oldco of such Distributing 1 stock to Distributing 2, will qualify as a reorganization under section 368(a)(1)(F). Oldco and Distributing 1 each will be "a party to a reorganization" under section 368(b).
- (12) No gain or loss will be recognized to Oldco upon the deemed transfer of all of its assets to Distributing 1 in exchange for all the stock of Distributing 1 and the assumption by Distributing 1 of Oldco's liabilities and other obligations (section 361(a)).
- (13) No gain or loss will be recognized to Oldco upon the deemed distribution of such Distributing 1 stock to Distributing 2 (section 361(b)).
- (14) No gain or loss will be recognized to Distributing 1 upon its deemed receipt of all the assets of Oldco in exchange for shares of Distributing 1 stock and the assumption by Distributing 1 of Oldco's liabilities and other obligations (section 1032(a)).

- (15) No gain or loss will be recognized to Distributing 2 upon its deemed receipt of the stock of Distributing 1 in deemed exchange for the stock of Oldco (section 354(a)).
- (16) The basis of each asset of Oldco in the hands of Distributing 1 will be the same as the basis of that asset in the hands of Oldco immediately before its transfer (section 362(b)).
- (17) The holding period of each asset of Oldco in the hands of Distributing 1 will include the period during which the asset was held by Oldco (section 1223(2)).

The LP Distribution

Based solely on the information and representations submitted, we rule as follows on the LP Distribution:

- (18) Because LLC and LP are disregarded entities, the LP Distribution will be disregarded.

The Contribution and the Internal Spin

Based solely on the information and representations submitted, we rule as follows on the Contribution and the Internal Spin:

- (19) The Contribution and the Internal Spin will constitute a divisive reorganization within the meaning of sections 368(a)(1)(D) and 355. Distributing 1 and Sub 2 will each be “a party to a reorganization” within the meaning of section 368(b).
- (20) Because LLC and LP are disregarded entities, the Contribution will be treated for federal income tax purposes as a contribution by Distributing 1 of the Transferred Debt Proceeds and the Intercompany Debt receivable to Sub 2.
- (21) No gain or loss will be recognized to (and no amount will be included in the income of) Sub 2 upon its receipt in the Contribution of the Transferred Debt Proceeds and the Intercompany Debt receivable (section 1032(a)).
- (22) No gain or loss will be recognized to Distributing 1 upon its deemed receipt in the Contribution of shares of Sub 2 stock in exchange for the Transferred Debt Proceeds and the Intercompany Debt receivable (section 361(a)).
- (23) Because LLC and LP are disregarded entities, the Internal Spin will be treated for federal income tax purposes as a distribution by Distributing 1 of all the stock of Sub 2 to Distributing 2.
- (24) No gain or loss will be recognized to Distributing 1 on the deemed distribution of the stock of Sub 2 to Distributing 2 in the Internal Spin (section 355(c)).

- (25) No gain or loss will be recognized to (and no amount will be included in the income of) Distributing 2 on the deemed receipt of the stock of Sub 2 in the Internal Spin (section 355(a)(1)).
- (26) The aggregate basis of the Distributing 1 and Sub 2 stock in the hands of Distributing 2 immediately after the Internal Spin will be the same as the aggregate basis of the Distributing 1 stock in the hands of Distributing 2 immediately before the Internal Spin, allocated between the Distributing 1 stock and the Sub 2 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (sections 358(a), (b) and (c)). Because the Distributing 1 stock held by Distributing 2 immediately before the transaction may have different bases (e.g., shares of stock were acquired at different times and at different prices), the bases of the Distributing 1 blocks of shares will be allocated between Distributing 1 blocks and Sub 2 blocks (block by block allocation).
- (27) The holding period of the Sub 2 stock deemed received by Distributing 2 will include the holding period of the Distributing 1 stock with respect to which the stock is received, provided that Distributing 2 holds such Distributing 1 stock as a capital asset on the date of the Internal Spin (section 1223(1)).
- (28) The earnings and profits of Distributing 1 will be allocated between Distributing 1 and Sub 2 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(a) and 1.1502-33.

The Deemed Distributing 2 Assumption

Based solely on the information and representations submitted, we rule as follows on the Deemed Distributing 2 Assumption:

- (29) Because LLC and LP are disregarded entities, the Deemed Distributing 2 Assumption will be treated for federal income tax purposes as an assumption by Distributing 2 of Distributing 1's liability for the Oldco Notes and Distributing 1's guarantor obligations under the Sub 2 Notes Guarantees.

The External Spin

Based solely on the information and representations submitted, we rule as follows on the External Spin:

- (30) No gain or loss will be recognized to Distributing 2 on the distribution of its stock in Distributing 1 to the Distributing 2 shareholders in the External Spin (section 355(c)).

- (31) Except for cash payments in lieu of fractional shares of Distributing 1, no gain or loss will be recognized to, and no amount will be included in the income of, the Distributing 2 shareholders in the External Spin (section 355(a)(1)).
- (32) The aggregate basis of the Distributing 2 and Distributing 1 stock in the hands of the Distributing 2 shareholders immediately after the External Spin will be the same as the aggregate basis of the Distributing 2 stock in the hands of the Distributing 2 shareholders immediately before the External Spin, allocated between the Distributing 2 stock and the Distributing 1 stock in proportion to the fair market value of each in accordance with Treas. Reg. § 1.358-2(a)(2) (sections 358(a), (b) and (c)). Because the Distributing 2 stock held by the Distributing 2 shareholders immediately before the transaction may have different bases (e.g., shares of stock were acquired at different times and at different prices), the bases of the Distributing 2 blocks of shares will be allocated between the Distributing 2 blocks and Distributing 1 blocks (block by block allocation).
- (33) The holding period of the Distributing 1 stock in the hands of the Distributing 2 shareholders will include the holding period of the Distributing 2 (as successor to Oldco) shares with respect to which the shares are received, provided the Distributing 2 shares are held as capital assets by the Distributing 2 shareholders on the date of the External Spin (section 1223(1)).
- (34) A Distributing 2 shareholder who receives cash in lieu of a fractional share of Distributing 1 stock in the External Spin will recognize gain or loss measured by the difference between the basis of the fractional share received, as determined above in ruling (38), and the amount of cash received (section 1001). Any such gain or loss will be treated as capital gain or loss, provided the fractional share was held as a capital asset on the date of the External Spin (sections 1221 and 1222).
- (35) As a result of the External Spin, the earnings and profits of Distributing 2 will be allocated between Distributing 2 and Distributing 1 in accordance with section 312(h) and Treas. Reg. §§ 1.312-10(b) and 1.1502-33.
- (36) Except for purposes of section 355(g), payments made between any of Distributing 1 and Distributing 2 and their respective affiliates under the Distribution and Separation Agreement or any of the Ancillary Agreements, or other obligations that (i) have arisen or will arise for a taxable period ending on or before the External Spin or for a taxable period beginning before and ending after the External Spin and (ii) will not become fixed and ascertainable until after the External Spin, will be treated as occurring before the External Spin (cf. *Arrowsmith v. Commissioner*, 344 U.S. 6, 73 S.Ct. 71, 97 L.Ed. 6, 1952-2 C.B. 136 (1952) (tax character of later transaction will derive from earlier, related transaction); Rev. Rul. 83-73, 1983-1 C.B. 84).

The LP and LLC Dissolutions

Based solely on the information and representations submitted, we rule as follows on the LP and LLC Dissolutions:

- (37) Because LLC and LP are disregarded entities, the LP and LLC Dissolutions will be disregarded.

The Oldco Notes and the Sub 2 Notes

Based solely on the information and representations submitted, we rule as follows on the effect of the proposed transactions on the Oldco Notes and the Sub 2 Notes:

- (38) The proposed transactions will not result in a significant modification to the Oldco Notes (Treas. Reg. § 1.1001-3(e)(4)(i)(C)).
- (39) The proposed transactions will not result in a significant modification to the Sub 2 Notes (Treas. Reg. §§ 1.1001-3(e)(4)(iv)(A), 1.1001-3(f)(5)(i)).

CAVEATS

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In particular, no opinion is expressed regarding (i) whether LLC and LP are disregarded entities under Treas. Reg. § 301.7701-3; (ii) whether the Internal Spin or the External Spin satisfies the business purpose requirement of Treas. Reg. § 1.355-2(b); (iii) whether the proposed transactions are used principally as a device for the distribution of the earnings and profits of Distributing 2, Distributing 1 or Sub 2 (see § 355(a)(1)(B) and Treas. Reg. § 1.355-2(d)); or (iv) whether the Internal Spin or the External Spin and an acquisition or acquisitions are parts of a plan (or series of related transactions) under § 355(e)(2)(A)(ii).

In addition, no opinion is expressed regarding whether the transactions discussed above in fact result in a change in payment expectations under § 1.1001-3(e)(4)(vi) or a significant alteration under § 1.1001-3(e)(4)(i)(E), or regarding the tax effect that the proposed transactions may have on any debt other than the Oldco Notes and the Sub 2 Notes.

PROCEDURAL STATEMENTS

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

Gerald B. Fleming
Senior Technician Reviewer, Branch 2
Office of Associate Chief Counsel
(Corporate)